

September 11, 2017

**To: Members of the Children, Families, Health, and Human Services Interim Committee**

In the rules, the Department has stated that these rates are “consistent with efficiency, economy and quality of care.” Notice, at page 17. They also concluded that “[t]hese rates are sufficient to enlist enough providers so that care and services under the Montana Medicaid program are available to the extent that such care and services are available to the general population in the geographic area.”

Given the number of Medicaid providers from all areas who are protesting this rule and providing information about the significant impact of the rate cut on the availability of their services, these assertions are not credible.

This language, of course, is from the federal Medicaid law’s “equal access” provision, which requires that state Medicaid programs must set rates that are sufficient to assure access, quality and efficiency of services. 42 U.S.C. § 1396a (a)(30)(A). It is not a goal – it is a requirement. It is hard to imagine how Montana Medicaid could demonstrate compliance with this provision. DPHHS should provide the rate studies and other inquiries the Department has made to establish that it complies with this provision. We requested any and all rate studies conducted by the Department prior to distributing this proposed rule in our Administrative Rule comments. We also asked that they tell us if none such studies exist.

We have no response from the Department.

In addition, state law (Mont. Code Ann. § 2-4-111) requires a Department to determine if a proposed “rule will significantly and directly impact small businesses.” Given the testimony today and the testimony they received in late July about the significant and devastating effects of these proposed rules, it is inconceivable to us that the Department has determined that this WILL NOT significantly and directly impact small businesses.

If the Department does find that small businesses will be impacted, state law requires that they prepare a small business impact analysis. We do not believe that this has been done. We feel that this analysis is the least that the Department could do to provide the legislature and the public with the facts about what impact this will have on small businesses across Montana.

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